City Council
of the
City of Las Cruces

Regular Meeting

January 19, 2016
1:00 P.M.
Council Chambers, City Hall

MEMBERS PRESENT:

Mayor Ken Miyagishima **(absent)**
Councillor Kasandra Gandara, District 1
Councillor Greg Smith, District 2
Councillor Olga Pedroza, District 3
Councillor Jack Eakman, District 4
Councillor Gill Sorg, District 5
Councillor Ceil Levatino, District 6 **(absent)**

STAFF:

Robert Garza, City Manager
Rusty Babington, City Attorney
Linda Lewis, City Clerk

I. OPENING CEREMONIES

Mayor Pro-Tem Smith called the meeting to order. Mayor Pro-Tem Smith led the Pledge of Allegiance.

Mayor Pro-Tem Smith and a volunteer from the Animal Services Center presented the Pet of the Week.

Mayor Pro-Tem Smith presented a Proclamation to Sharon Trujillo Colesios and students and declared the week of January 31st as Catholic Schools Week.

Mayor Pro-Tem Smith read proclamation for Schools Choice Week into the record.

Remembrance of Councillor Miguel Silva

Irene Oliver-Lewis, Member of the Public said Miguel brought us laughter, joy, and support. We will be doing a plaza plot in his honor for Dia de Los Muertos.

Max Bower, Member of the Public and Bord Member of the Las Cruces Homebuilders Association said Miguel was a vibrant and compassionate leader. He brought out the best in many of us and we will miss him.

Kari Bachman, Member of the Public said he and I had disagreements but I am forever enriched by them. I would like to propose that we honor him with a proclamation on his birthday, February 16th.

Dolores Connor, Member of the Public and Former Councillor said I know how much you fall apart when your service ends. Miguel was good at listening to people complain about things and he had a great sense of humor.

Nathan Small, Member of the Public and Former Councillor said we will remember his style, his smile, and his willingness to try things out. His birthday seems like an amazing opportunity to remember him.

Loretta Reyes, Public Works Director said I want to express my condolences to his family and friends.

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Councillor Sorg said we had lunch on Mondays at noon and I got a lot of tips from him. He spoke about the importance of mental health. I think it would be a great tribute to do something for our mentally ill community.

Councillor Eakman said I got to know Miguel during the last campaign. I feel remorse that I didn't reach out to him.

Councillor Pedroza said Miguel and I often disagreed but he will be missed. I think it would be appropriate to do something in terms of the crisis line.

Councillor Gandara said I have big shoes to fill and I want to express my condolences to his family and friends. Being a social worker, I had a lot of remorse when Robert called me. I want to encourage others to call the New Mexico Crisis Support Line.

Mayor Pro-Tem Smith said Miguel's impact is felt and will be felt. Funeral services will be Saturday at 10 a.m.

II. <u>CONFLICT OF INTEREST INQUIRY BY MAYOR AS REQUIRED BY LCMC SECTION 2-27(E)(2).</u> *At the opening of each council meeting, the chairperson shall ask if any member of the city council, city manager, or any member of the city staff has any known conflict of interest with any item on the agenda.*

Mayor Pro-Tem Smith asked if anyone had any conflicts with anything on the agenda?

There is none.

III. PUBLIC PARTICIPATION

Vince Jeffers, Member of the Public said I went to the Doña Ana County Commission meeting and spoke about a foreclosed home on someone who was sent to the state hospital for mental illness. I think it's wrong and if you want to honor Councillor Silva you need to look at what's really happening.

Nicole Gurley, Member of the Public said my daughter is acutely mentally ill and she does not get the services that she needs. We only have three psychiatrists in Las Cruces and my daughter doesn't have one. My husband and I are considering leaving Las Cruces for our daughter.

Dana Garcia, Member of the Public said I want to pay my respects to Councillor Silva's family. This tragedy has oopened many eyes. Mental illness awareness is vital in New Mexico.

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IV. ACCEPTANCE OF AGENDA

Councillor Eakman Moved to Approve the agenda as presented and Councillor Pedroza Seconded the motion.

Mayor Pro-Tem Smith called for the roll on the motion to Approve the agenda as presented and it was Approved. 5-0. Councillor Gandara, Councillor Pedroza, Councillor Eakman, Councillor Sorg, and Mayor Pro-Tem Smith voted aye. Councillor Levatino and Mayor Miyagishima were absent.

V. CITY COUNCIL MINUTES

*(1) Regular City Council Meeting of January 4, 2016

VI. RESOLUTION(S) AND/OR ORDINANCE(S) FOR CONSENT AGENDA

*(2) Resolution No. 16-141: A Resolution Approving a Utility Infrastructure Improvement Funding Agreement Between Mesa Development Center, Inc. and the City of Las Cruces for Modifications to the Water System in Stewards Drive Between Sierra Vista Avenue and Pettes Boulevard and Pettes Boulevard from Stewards Drive to Mesa Drive. The Resolution

Authorizes the City Manager to Sign the Agreement on the City's Behalf and to Approve an Adjustment to the FY 2016 Budget.

*(3) Resolution No. 16-142: A Resolution Authorizing the City of Las Cruces (City) to Accept Legislative Appropriation 15-0765 in the Amount of $25,000.00, Through the New Mexico Department of Finance & Administration (NMDFA) to Plan, Design, and Construct Electrical Infrastructure in Downtown Las Cruces; to Ratify the City Manager's Signature on the Contract Agreement; and to Amend the City's Adopted FY2016 Budget and FY2016 Capital Improvement Plan (CIP).

*(4) Resolution No. 16-143: A Resolution Authorizing the City of Las Cruces (City), on Behalf of the Museums System (Museums), to Accept Legislative Appropriation No. 15-0769 in the Amount of $25,000.00, Through the New Mexico Department of Finance & Administration (NMDFA) to Plan, Design and Construct Improvements to the Museums in Las Cruces; to Ratify the City Manager's Signature on the Contract Agreement; and to Amend the City's Adopted FY2016 Budget and FY2016 Capital Improvement Plan (CIP).

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*(5) Resolution No. 16-144: A Resolution Authorizing the City of Las Cruces (City) to Accept Legislative Appropriation 15-0763 in the Amount of $220,000.00, Through the New Mexico Department of Finance & Administration (NMDFA) to Plan and Design a Community Competition Pool in Las Cruces; to Ratify the City Manager's Signature on the Contract Agreement; and to Amend the City's Adopted FY2016 Budget and FY2016 Capital Improvement Plan (CIP).

*(6) Resolution No. 16-145: A Resolution Authorizing the City of Las Cruces (City) to Accept New Mexico Legislative Appropriation No. 15-0918 in the Amount of $65,000.00, Through the New Mexico Department of Transportation (NMDOT) to Plan, Design and Construct Improvements to Streets in Las Cruces; to Ratify the City Manager's Signature on the Contract Agreement; and to Amend the City's Adopted FY2016 Budget and FY2016 Capital Improvement Plan (CIP).

*(7) Resolution No. 16-146: A Resolution Authorizing the City of Las Cruces, on Behalf of the Las Cruces Fire Department, to Accept Legislative Appropriation No. 15-0766 in the Amount of $80,000.00, Through the New Mexico Department of Finance & Administration (NMDFA) to Purchase Various Firefighting Equipment; to Ratify the City Manager's Signature on the Contract Agreement; and to Amend the City's Adopted FY2016 Budget.

*(8) Resolution No. 16-147: A Resolution Authorizing the City of Las Cruces (City), on Behalf of the Animal Services Center of the Mesilla Valley (ASCMV), to accept Legislative Appropriation 15-0768 in the Amount of $40,000.00, Through the New Mexico Department of Finance & Administration (NMDFA) to Design Phase I of the Renovations and Expansion of the Center in Las Cruces; to Ratify the City Manager's Signature on the Contract Agreement; and to Amend the City's Adopted FY2016 Budget and FY2016 Capital Improvement Program (CIP).

*(9) Resolution No. 16-148: A Resolution Authorizing the City of Las Cruces, on Behalf of the Southwest Border High Intensity Drug Trafficking Areas (HIDTA) Program - New Mexico, to Accept Grant Award Decrease Modification Six from Grant Number G15N0006A in the Amount of $1,688.00, from the Executive Office of the President, Office of National Drug Control Policy, to Ratify the Mayor's Signature on the Grant Agreement and to Adjust the FY 2016 Budget.

VII. UNFINISHED BUSINESS / *APPEAL PROCESS*

Council members shall not privately discuss with any interested person or persons the merits of a case which is, or may be pending before the City Council. If there have been any such discussion or discussions, they should be disclosed by the appropriate Councillor(s) or individuals at this time.

Appeals to be presented before the Las Cruces City Council shall follow the procedure outlined in LCMC 1997, Section 38-13.

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(10) Resolution No. 16-104: A Resolution Appealing the Decision of Denial by the Planning and Zoning Commission on September 22, 2015 for a Special Use Permit Application to Construct a New Wireless Communication Facility on a Property Located at 4790 Stern Drive. The Subject Property Encompasses 1.552± Acres and is Zoned C-3 (Commercial High Intensity). Submitted by Verizon Wireless/Tectonic Engineering on Behalf of A & E Enterprises, Inc., Property Owner (Sup-15-01). **Tabled on November 2, 2015**

Councillor Eakman Moved to Remove Resolution No. 16-104 from the table and Councillor Gandara Seconded the Motion.

Mayor Pro-Tem Smith called for the roll on the Motion to Remove Resolution No. 16-104 from the table and it was Approved. 5-0. Councillor Gandara, Councillor Pedroza, Councillor Eakman, Councillor Sorg, and Mayor Pro-Tem Smith voted aye. Councillor Levatino and Mayor Miyagishima were absent.

Mayor Pro-Tem Smith said alright, Mr. Garza. Do we have a presentation for this one?

Robert Garza said Mr. Chairman, I don't believe staff has a presentation on this item but I think the appealing body....I'm sorry, sir. I don't have your name but if you would introduce yourself and your other team members. I need to ask our City Attorney if there's any further protocols we need to follow as far as testimony, swearing anybody in, anything like that?

Rusty Babington, City Attorney said City Manager and Council what I'd recommend is anybody who wants to testify be sworn in at this time and then Mr. Williams representing Verizon can then make the first presentation.

Mayor Pro-Tem Smith said alright, thank you Mr. Babington and does Mr. Williams need to be sworn in or is he simply making the presentation?

Rusty Babington said Mayor Pro-Tem, there's sort of a difference of opinion. If you're talking to an attorney probably not but generally the practice has been that everyone is sworn in, including the attorney.

Mayor Pro-Tem Smith said alright, who do we have doing those honors then for us to swear in, Mr. Garza?

Robert Garza said Mr. Chairman, just not knowing the nature of the questions that might come up, I would have our building official Mr. Robert Kyle come up and community development director Dave Weir as staff to also be sworn in so that they can help respond to any inquiries you might have as far as procedure and how we got here.

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Mayor Pro-Tem Smith said thank you, Mr. Garza and so then do I ask all the folks who are going to be speaking to swear that they will be sharing the items or how is that handled, Ms. Lewis?

Linda Lewis, City Clerk said Mayor Pro-Tem, if everybody that is going to be speaking today, testifying today, if they could please come up front I will swear them in and if everybody can state their name after they are sworn in for the record.

Mayor Pro-Tem Smith said thank you, Ms. Lewis. If you will all bring yourselves to the front and then Ms. Lewis will swear you in.

Linda Lewis said okay, please raise your right hand. Do you swear and affirm that the testimony you are about to give is the truth and nothing but the truth under penalty of law? If everybody can please state their name for the record.

Mark Williams
Les Gutierrez
Hamdi Alaaldin
Philip Braker
William Smith
Larry Brooks
Dominic Fierro
Robert Kyle
David Weir

Mayor Pro-Tem Smith said thank you all. Alright, Mr. Williams.

Mark Williams said Mayor Pro-Tem, Councillors, City Officials and members of the public, good afternoon. My name is Mark Williams. I represent Verizon Wireless. With me today in the Council Chambers are Hamdi Alaaldin who is our RF or radio frequency engineer, Adam Fink and John Tyke with Verizon Wireless also and then Les Guiterrez from Tectonic Engineering. We thank you very much for the opportunity to present to you today and ask that you reverse the decision of the Planning and Zoning Commission and approve this application for a wireless facility, which will benefit the entirety of this community. Now we've made a presentation in the past but this was before Councillor Gandara and Councillor Eakman were on the Council and so what I propose to do Mr. Mayor Pro-Tem, if okay with you, was to go through that presentation again unless you have another procedure or an objection, I thought I'd offer that.

Mayor Pro-Tem Smith said no, in all fairness I think that they should have the whole sense of what we're talking about. Thank you, Mr. Williams.

Mark Williams said Okay. Thank you. Yeah, and I hope that you all received a copy of my letter that I sent last week along with a copy of the PowerPoint presentation in advance. At the last meeting you had asked for some updates and I'm going to be walking through those but you had asked for that and I wanted to give that to you in advance so that you had the opportunity to review that. Certainly if you have any questions on that please let me know.

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As I indicated, the application should be approved. First, it's a benefit to this community. I'm going to talk about that in a second, but also it meets all code and legal requirements and your City staff has recommended it to the Planning and Zoning Commission, has recommended it to you and in addition the independent engineer that the City hired prepared a report and filed a report, which indicates that the location on Stern Drive, which we're talking about, is the best location in the City for this wireless facility. We also thoroughly explored all options to fill the capacity and therefore the coverage gap and this is the best workable location. We did go through and before the November 2 hearing, which I'll talk about in a minute and looked at other alternatives and did not find any. After the November 2....at the November 2 hearing the Mayor asked that the citizens who had some issues with the site go back and help us find other sites and put the onus on them. However, we felt that it was important and in good faith that we at Verizon Wireless also go back and make additional efforts to work on additional sites and we're going to talk about that today, which we have. The result of that is that those sites that may be avaialble are speculative at best and this is the least intrusive site and the only viable one at this time and we feel that this location as the independent engineer indicated is the best location and is of vital importance to the City, its citizens, emergency service providers, New Mexico State University and travelers. It's along I-10 so it's a well traveled area and there's a lot of population around that area and what we know is is that the sites to the north, which we'll talk about are at capacity and therefore coverage issues and there will be a....there's a substantial gap in capacity and therefore coverage, which needs to be remedied, requiring this facility. I think we all know that there is increasing and exponential demand for

wireless services. We all have cell phones, smart phones, PDAs. A number of us have multiple devices and all of that especially a lot of times people will be looking at sporting events or live feeds. They may be looking at this live feed of this Council meeting on their smart phone. That's actually very likely and with that, that creates a lot of bandwidth. There's a lot of capacity that is being used up and the sites to the north up on I-10 and over the university are at capacity. As the slide indicates the demand for wireless service is expected to grow 650% between 2013 and 2018. Seventy percent of 911 calls originate from a cell phone. Thirty nine percent of households are wireless only and that's increasing. The demographic in Las Cruces is that it's younger than a lot of other areas and therefore as a result of that there are a lot of less wired homes and more wireless homes and more than 75% of perspective homebuyers prefer that. As Councillor Levatino said in the November 2 hearing, I believe she's involved in the real estate business, whenever she goes with somebody to a home one of the first things they see....try to determine is whether they have bars.

Now why is this important for the City of Las Cruces and I took the opportunity to read and bring you some quotes from some of the goals that you have on your website and it's true. Las Cruces is a City on the move, the envy of other municipalities across the state, is dedicated to bringing industries and businesses to town and I've had the privilege now...this is the third time I've had the privilege of being here and every time what I hear is that the City is growing and is a welcoming City. There are major industries, which include aerospace, agriculture, education. All of those require additional technology and they use wireless technology more and more and more and therefore, there is a need for wireless facilities. Certainly public safety services require that there is the availability of data services. Many ambulances and other emergency service providers have devices in their trucks that require the ability to have wireless services and in fact in the strategic plan of 2014, supporting advanced technologies to increase efficiencies for police and fire including mobile applications and improving emergency services are planned goals and accomplishments.

So, how to get there. The capacity issue with all of this data being pushed through is like if we pretend that that door up at the end and we have thousands of people coming in here, you can't get through that door very well. And that's where we're at with the two sites and Mr. Alaaldin will come up here and talk about that is that those sites are at capacity and so you have data drops, you have call drops, and therefore we have a substantial gap in capacity and so the solution is a wider door, which this is what this facility allows and because there's a significant gap in capacity and therefore coverage to determine this area, there will be a substantial gap going forward and I think you've seen the site location but here it is. It obviously is right along a busy I-10 and there are residential and NMSU is over here so there's quite a bit of population in this area. In fact, I'll ask Mr. Alaaldin to come up and join me for a minute, please.

This is what is called the site ring. I started pointing and you can't see where I'm pointing. I apologize. This is the site ring right here. This is the area where there is some substantial gap in coverage, which is identified by Mr. Alaaldin. Mr. Alaaldin is a radiofrequency engineer at Verizon Wireless and what he did to determine this and there are sites...there's another site up in this area,

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which is the LLC Knox and then another site in this area....let me go back. I think that will help. Up in this area there's one and over in university. Is that correct?

Hamdi Alaadin said correct. Yes.

Mark Williams said and these are the two sites that are at capacity. Is that correct, Mr. Alaaldin?

Hamdi Alaadin said that's correct. Based on the data analysis that we run. We run data analysis on every cell site and every sector of each cell site so each cell site is designed to three sectors, each sector on that side serves a different....

Mayor Pro-Tem Smith said you're going to need to speak right into the microphone.

Hamdi Alaadin said we run capacity analysis....thank you. We run capacity analysis on every sector of each site on busy hours of every day and we accumulate that every month and we look at that months to months, day to day, week to week, and we analyze this data. Based on those data, those two sites are broke and they're exponentially growing and that's why we're here.

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Mark Williams said so because of the.....

Rusty Babington said excuse me, Mr. Williams? Excuse me. Sir, could you repeat your name just for the record, please?

Hamdi Alaadin said my name is Hamdi Alaadin. I'm the RF engineer for Verizon Wireless.

Rusty Babington said thank you very much.

Mayor Pro-Tem Smith said thank you.

Mark Williams said and this is a propogation map? Is that what you call it? If that's okay, we'll both get a little close here if that's okay and this map and the following one were prepared by Mr. Alaaldin and what he's showing here is a coverage legend and could you describe the substantial gap in coverage that we find in this area, please? And you can use the mice if you need to.

Hamdi Alaadin said so this is a 4G LTE data design where coverage is projected by a tool. That tool is designed based on actual drive test data in your environment and in the City of Las Cruces and what this shows is color coded based on signal strength to the area's geographical locations. So as you can this area was at this site shows that there's a lower signal strength compared to the other areas, which at the end it results of low capacity and low coverage for that area especially on your indoor, in building, basements and situations like that.

Mark Williams asked does that mean that there's a substantial gap in capacity and coverage?

Hamdi Alaaldin said coverage and capacity always go hand to hand. You could be at a ballgame in a ballpark and you have full bars but you won't be able to make a call because the capacity of that site is gone. There's no more capacity. If you think of capacity as a bucket, you could let's say put 10 calls in one bucket, the number 11th call is not going to be able to get into the bucket and that's the way it is. So when you have no capacity at that point, it doesn't matter how good the coverage is you won't be able to even get in and that's mainly what we're showing here is by adding this cell site to this area you increase. You take the available capacity. Right now it's divided by two. If you're dividing it by three, which opens the door larger and you introduce better coverage to the folks who live in the area and travelers who go through that area.

Mark Williams said let's talk about that in a second but as of right now there is a substantial gap in capacity and coverage?

Hamdi Alaaldin said according to our data, yes.

Mark Williams said okay, so then what we have here folks is a map which if this site is approved, which we asked to be approved, what will occur and could you please explain giving the legend up here in coverage and capacity what will result if this site is approved.

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Hamdi Alaaldin said as a result, you're going to go from a poor coverage area to an excellent coverage area and to an added number of capacity per site, which could be up to 200 or so as you're not having it today.

Mark Williams said and as we indicated before and we put this in the letter, Mr. Alaaldin and part of the application filed this report, which is dated May 4 and then you have the engineering proof given by the City's independent engineer Greg Best indicating that this is from a technological standpoint the best location in the City. The City staff agrees that this is the best site and so from that standpoint there is a demonstrated substantial gap in capacity and coverage.

So the current...we talked about the current location of it. It is zoned C-3, which telecommunications facilities are allowed. It's a commercial area. Right now on the area there's an abandoned building. We think it was a former convenience store of some sort but it sits abandoned at this point and as I understand it, the way I read the code, a 60 foot building could be built there right now. It has not been. The communications facility that we propose. Here it is. Here is the zoning map. The communications facility that we propose....originally we proposed a 75 foot facility. And then at the request from the P&Z and the public, we reduced it down to 65 feet, which is within the zoning code at that point. So from that perspective it meets the height. The other thing that these are further.....there was a further map of the location of where it is.

The early procedural background is we filed it in May. Then we had...this notes the independent City engineer's report. There was initial P&Z meeting of July 28th. After that we looked at additional alternate locations. We reduced the height and we considered masking it to look like a

tree and did some view shed views, which we will look at here in just a few minutes folks. Then on September 22 that's when we went before the P&Z. The staff again recommended approval and the P&Z Commission denied the application by a 3 to 1 vote. As you recall, we had the initial appeal that was filed. The initial hearing was on November 2 and at that meeting the application was tabled so that neighbors could go try to find available and a workable site and the Mayor had indicated that the onus was on those folks to find it and that's what the record says but in addition we felt that we had to exercise good faith in working with that and trying to look at additional sites.

Let me briefly walk through the original proposal so that Councillor Gandara and Councillor Eakman understand what we're doing. We indicated that it was a 75 foot tall wireless facility. It is adjacent to an R-1AC zoned property. Even though it is a C-3 commercial zone when it's next to that zone there are some additional requirements, which the City staff said that we felt that we concluded that we met. It will meet all required setbacks. It's located to the rear of the subject property but the property is right along a service road, which is again right on I-10 on the southwest side if you will.

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Mr. Alaaldin filed a report indicating that there weren't any collocation opportunities and he just discussed why it's required including serving customers, 911 users and others in the area and it will provide the capacity to fill a substantial gap given during peak times and interference is a real issue but as your independent engineer determined that's why this site is the best one. New communications facilities are structures adjacent to property zoned R-1A are permitted through the SUP process so that's why we had to go through this process to begin with as staff will tell you and we had to also demonstrate that we met all of the requirements. The City staff went through it, determined....assessed the code, the zoning, the setback and other issues and determined that this application complied with all of the requirements for a special use permit. In addition and importantly in order to fulfill that, there were some approvals or some reviews from other agencies that had to be obtained and those were obtained as well. So from that perspective it has complied with all of the requirements for a special use permit.

This is just a quote right here on page 28 of the PowerPoint of the City's independent engineer's finding saying that in summary the best site is the proposed Blackhawk and I should have mentioned that before. It's on Stern Drive but we have been using the word Blackhawk as a name for the facility as we've gone along. So that's what that is. The staff has recommended the approval of this both the P&Z and to this Council. We had the P&Z hearing and then we were asked to have additional, looking at additional sites. There were some commercial properties that will not work. Two are listed in the independent expert's report, two on San Francisco Avenue that have a setback and code compliance and facility height problems. And at that time, NMSU has twice said that it's not interested. There was a pecan orchard that we looked at that we've talked about before that's down to the southwest but that's too far and then the Tortugas we looked at the time and I'm going to talk about that again in just a few minutes but there were some zoning issues. Therefore, this was the site...the Blackhawk site was the most readily available and best alternative, and remains so today. We did go to the...after the July 28th hearing we did go to NMSU and this is an email on page 32 of the PowerPoint from Scott Eschenbrenner

from New Mexico State University indicating that they don't have a space right now because they're going to use it for the space that they might have for a solar project that will also benefit the community so they don't have any space to do that and we'll see another email later on again where he reiterates that.

This is the alternate location, which is 2200 feet away, which will not work. It's too far away and just won't meet the requirements to fill that substantial gap. We did, based upon the feedback, we did revise the facility with a 65 foot tall tower and to have a stealth tower. In other words, there were a couple of alternatives that were proposed. A cypress tree, which is obviously skinnier and then a kind of a pine looking tree, which we contend works very, very well. We have gone, and I know there's some good citizens here that will talk about it. They've talked about it before but going into the neighborhoods there are other types of facilities that are out there. There are transmission lines. There are other views that the neighborhood itself is a little lower and looking out it will blend we think within the area and so from that perspective we think that this site again becomes the least intrusive site. We did lower it. We talked about that and then we had the P&Z meeting. There was an oral decision without sufficient stated bases or written findings. I can't talk about why they didn't do that but they did not do that. The record reflects that. The City staff prepared a similar analysis for it and again concluded that it was the best place for the site and again as we see on page 39 of the PowerPoint recommended approval. There were at the time some neighborhood residents who commented on the views and we indicate in my letter to you what the law says about that but we think that, well not think, we've demonstrated that what we've tried to do by lowering the height and having the pine tree and where the location is fits better in with the location and is the least intrusive view and there are mature trees in the neighborhood and there are very few view plains mentally affected and so if you look at...these are some of the existing views. Up here where I'm pointing are some major power lines going through this area and you see these right here and then you see this is a view from Vista Cuesta and then from O'Hare on page 43. On page 44, you have a view from Agave Drive and Agave Place and then one from Stern Drive and Salopek for view impacts. Mr. Gutierrez was involved in obtaining these photographs and can speak more to them. Mr. Gutierrez, would you could come up for just a second please? These are pictures that you obtained and provided for Council's review.

Les Gutierrez said yes that's correct and for the record my name is Les Gutierrez, Councillor. These were what we call photo simulations. We do these in lots of jurisdictions in New Mexico and they give you a fairly good rendering fairly close to scale of what they would look like from these positions.

Mark Williams said these are...and what this shows, and Mr. Gutierrez, could you explain to Councillors what this shows, please? You can get a little closer here.

Les Gutierrez said yes. What you're seeing there are kind of line of sight views at different trajectories from some of the areas where the citizens were concerned about the views and it just kind of gives you an idea of....from the starting points and where they end up.

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Mark Williams said so what we've tried to demonstrate is that we tried to go further and further to demonstrate that the site is the least intrusive. And then at the P&Z meeting, the P&Z did not follow the staff recommendation and denied our application. They didn't give a basis and that's why we're here. At the November 2 Council meeting, Mr. Kyle noted that we lowered the height, that is complies with all zoning requirements and that it meets all requirements of the zoning code and then the Mayor, from the record, we believe agreed in asking them that we show good faith and agree to tabling at least an attempt to assess alternatives, which we did. It was tabled to be brought back. As we indicated, the onus was to be placed on the people...the citizens. However, we felt that we also had to go out and search and that's what I want to talk about now.

There is a supporting email from here from a neighbor that was filed in the City November 2, the day of the hearing. So there is the support from a neighboring neighborhood and obviously the landowner that owns the spot where we're going to place the spot supports it. Mr. Hayes could not be here. He had a preplanned vacation and is out of town so unfortunately could not be here but he obviously supports it.

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So, what did we do? We again went back to New Mexico State University to talk with them and one of the emails I will get to in a second was from that discussion and then we were also asked to contact the Tortugas Tribe and County. There are a few available options. There are none permitted in permitted zoning areas. This is in Doña Ana County where the Tortugas Tribe property is and so in Doña Ana County there are telecommunication facilities permitted and commercial zones. The zones that where there are potential sites are in EC-1 and ER residential area and so they're not administratively allowed and therefore would require the same kind of process that we're going through here, a special use process. We would have to for one property get a couple of variances, height and setback and then another one we would have to get one and perhaps two so there's no certainty whatsoever indeed. It is speculative of whether we can. In fact one of the emails that we'll get to in just a second from the Doña Ana County lets us know that.

This page 51 is an email dated November 11th so about 10, nine days after our meeting, we went back to the New Mexico State University and they again indicated that they cannot accommodate a site because they already have plans for that area, that site, within the site ring. Then we also...this is an email from the Doña Ana County official, Mr. Meadows and he indicates that there are members who have obviously voted against it. There are neighbors who are going to probably object to it just like we had here. We have that he indicates that this location seems small and that he wanted to let us know that this is going to be a difficult situation to get this passed and is speculative at best and so what we would have to do if we went and filed an application there when we have absolutely no certainty to do it whereas here we know that it complies with everything, there we don't, we'd be back in the same process because they're going to ask us well what other sites have you looked at and are there other sites that are

available. Yes, Councillors or Commissioners of Doña Ana County. There are. We went and there's a perfect one on Stern Drive and that's where we went so we have continued to go and try to get additional sites if we can. We also talked with the folks from Arrowhead Park, which is almost due east of the Stern Drive property across the highway. We've had discussions but there's no specific site yet determined, only prospects. Again it would require university and state application and review process, which is going to be going down the road and it's speculative because we have no guarantee of approval. Again, we explored the Tortugas sites. I've gone through with you why that is speculative because we'd have to start the approval process again. Even if we could do that and we know right out of the gate that there are noncompliant aspects of that application with Doña Ana County and so in the circumstance that we have with this site on Stern Drive we have a site that complies with all the City code requirements and meets all of the needs of the City and is the best location technologically in the City for this site. We also, you know, we're here today to try to get a decision and we appreciate the fact that we had to push it off but we're here in order to ask you for approval of this site. We need to serve the citizens of the City of Las Cruces, travelers that come through here. We need to serve emergency service providers and all that come to be able to provide the data demands that they have, which is increasing, which I talked about at the beginning and which Mr. Alaaldin talked about. There is a significant gap right now and we found the least restrictive means to fill that gap with this one location. We've tried and it's not that we have not tried. We have gone back not once after October 28th, back again after September 22, again after November 2, again even up through discussions now and so we have established under the City code that we meet all the requirements. We also meet all the requirements of Federal law and because we are required to serve we have fulfilled all those requirements and we ask that in compliance with the law that you also approve this site because, not just because we comply with the law but also because this is going to be a real service to the citizens and travelers through Las Cruces, New Mexico. So, that concludes my presentation. If I could just ask my client if they have any other questions, any other things they want me to point out, and then I'm certainly willing to take any questions or however you would like to proceed, Mayor Pro-Tem.

Mayor Pro-Tem Smith said thank you, Mr. Williams. I did want to check with Mr. Babington to make sure as we go forward and the Council either asks you or your client or we hear from other members of the community if there are restrictions since this is basically a quasi judicial meeting as far as how we question or whether people can share things that weren't part of the original record.

Rusty Babington said Mayor Pro-Tem and Council with respect to asking questions, Council can certainly ask questions. If I think they go outside what's in the record, then I'll suggest that you not ask that question. With respect of things that are outside the record, at this juncture I'd be hard pressed to figure what's not outside the record but if it comes up I'll certainly address it, sir.

Mayor Pro-Tem Smith said thank you, Mr. Babington. Mr. Williams, if you'd like to have your client come forward that would be fine.

Mark Williams said okay. Well, if you have any questions I have nothing further, they have

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nothing further. If you have any questions, I'd be happy to answer them at this time or pass to other commenters.

Mayor Pro-Tem Smith said how about if we let those...if there's no one else who wants to speak in favor of the cell tower of service in that area. If we hear from the opponents and then we'll ask questions based on that. Is that fair for the Council? Okay. Thank you, Mr. Williams.

Mark Williams said okay. Thank you.

Mayor Pro-Tem Smith said then those who have sworn in and wish to speak in opposition. Sir?

William Smith said hi, thank you for the opportunity to speak. My name is William Smith as I stated earlier when I was sworn in. Members of the City Council and for the new members, I respectfully request that I be given too an opportunity to also catch the new members up. I'll be brief as I possibly can. I find it curious that I would like to state at the outset that the attorney representing Verizon says they feel that they don't understand what planning and zoning was dismissive of their initial request and of course I think you can put some credence on planning and zoning. Certainly City staff is going to make the recommendation simply because it meets the parameters of the setbacks and the zoning restrictions but you have review processes in place, i.e. planning and zoning and then ultimately City Council to consider items that exceed or transcend the scope of just simple numbers, setbacks, and zones. So, I would kind of like to if I can and this was in the record. Initially Verizon was told by the commission when it tabled their application to explore two alternatives, the NMSU property or certainly with Tortugas. So, they were told to do that. I'm a professor of business at New Mexico State University. I teach due diligence. Due diligence means that you meaningfully and I'm sure that you fully understand that but that you meaningfully vet and fully explore and get into all existing opportunities and available alternatives prior to a decision being made. I would for the record like to add that what Verizon did was far short of that and perhaps had they done that we wouldn't be here today I digress. I would like to point out that Verizon expresses concern for the community. I live in that area. I have never had any problems with any dropped calls, anything like that nor have any of my neighbors. I would like to also point out that this is for a proposed or a future demand. While I do understand the growth of a community, you have to understand that it's got to be within the interest of the members that live within that community and that's why we're here today as our representatives. I find it interesting that Verizon stated and I quote "The concerns that were expressed by myself and various others focus primarily on the belief that such facilities are allegedly "unsightly." The neighbors also made unsupported comments about other possible alternatives including the NMSU potential and also Native American land down the road and again back to the due diligence. I find it also curious that the presentation that was given initially showed photo shopped or artist renditions of what a tower would look like. I challenge any of you, you live in this community, when you drive up Missouri as you approach Telshor, you can see the fire department. There are mature, and I'm talking mature pine trees and among those mature pine trees is a cell tower that is "disguised as a pine tree" but sticks out like a sore thumb. Verizon is proposing putting this stealth pine tree where there's really nothing else. I find it curious that the photos that they present of course I do understand because they're trying to

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represent their position in the best light but it seems it's somewhat biased.

As far as where we live, that was not the initial ideal site. One point two miles down the road and I apologize. I'm saying if I'm standing on Stern Drive 1.2 miles down the road this way at Whiskey Dicks. There's a tower approximately 1.2 miles down this way there's another substantial tower. So with respect to dropped coverage in the future perhaps but again there's better places. We live in a planned urban development, a PUD. There's only two inlets and outlets into our community. This is unlike a simple on Highway 70 where there's multiple other accesses to the neighborhood whereby if a cell tower is here it's only going to effect a couple of members of that neighborhood. We're not a rich community as far as wealthy corporations. We're neighbors. I would like to also point out initially presented by NMSU, the ideal not interest of one email and they now show that there were two emails. They never reached out to the Arrowhead community park, which is part of NMSU. It's not NMSU proper but if I may please for the record approach with....

Mayor Pro-Tem Smith said you may give it to the clerk. Thank you.

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William Smith said what's being distributed are two emails. Verizon said that the onus was on the members of the community. As a member of the community and there are others here, we did indeed take on that onus in good faith, trusting that due diligence on the behalf of Verizon would in fact take place. Here are two emails that you'll see, one from Tortugas Tribe as far as a viable alternative, Dominic Fierro representing Tortugas Tribe. I believe he is in the audience. The other was from Wayne Savage, executive director of Arrowhead Park for an NMSU Arrowhead Park alternative. I want to also point out that the tower, the royalties from that tower will enure in the case of Tortugas to the members of that poor community that could use it most. Conversely, if it was an NMSU alternative, especially in today's exigency, I'm certain that you can only appreciate that Arrowhead as a not profit entity that helps support incubating entities and NMSU students in research into the community would enure the benefit as well. In either case, the economic benefit will not, n-o-t, will not inure to a private individual. That was an Eagle Qwik Mart that has now since closed. The gentleman had sold the liquor license that was there and for whatever reasons has closed it and now wishes to put a tower there to get a monthly residual income. If I may also, and again I'm keeping this as brief as I can, I would like to point out that if Council is being forced to make a decision, unfortunately I don't know what the process or procedures are. I'm not an attorney, but I will say that I would submit that due diligence has not been pursued by Verizon and I find it disingenuous at best that they represent that to members of Council that they have the best mind and interest of the community when they're going to say that they're presenting a need for something that there's numerous other places if in fact they would explore it. Lastly, they will say well but we don't know these unknown hoops we have to jump through. Had they done that, had they exercised that due diligence again months and months and months previous, again I would probably suspect we wouldn't be here today. I thank you for your time and I'll defer to other community members comments and then with any questions, unless there's any questions now.

Mayor Pro-Tem Smith said thank you, Mr. Williams. I think what we're going to do is allow people to speak and then we'll have questions and that way we'll have heard all sides of the story hopefully and then be able to base our questions on that. Thank you.

William Smith said thank you.

Philip Braker said good afternoon. My name is Philip Braker. City Council, thank you for being here today and welcome to the new members on the Council.

Mayor Pro-Tem Smith said and Mr. Braker you can raise that podium or lower the microphone. There's a white button to your right.

Philip Braker said to my right which would be here.

Mayor Pro-Tem Smith said well, it's under the keyboard. There you go. Thank you.

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Philip Braker said thanks for your time. Today really we've come down to basically you guys can vote for four things. It's in the minutes where basically you can vote yes to overturn the Planning and Zoning Committee, vote no to uphold the Planning and Zoning Committee, vote to amend, or vote to table it and I suggest that we don't vote to table this. This probably needs to end and I'm sure Verizon would like this to end too. The one thing that has been consistent through this whole process since I attended the first meeting back in August or September is the tunnel vision of Verizon. You know when you say that this is my solution and nothing else really works that's always going to be the solution and nothing else will work, and that's really what the contention is based on the plan here. We went to planning and zoning and planning and zoning looked at it and said it looks like there's alternatives. Go back and explore them, and then Verizon came back and said no, there's no good alternatives without substantiating it and planning and zoning voted against it, okay? We have planning and zoning for a reason and that is to plan. You want City planning going on. Is planning a tower right in a residential area the best thing to do when right across the road there is other things. If you look at the NMSU property just to the west where these could possibly go. There is antennas. There is towers. There is solar facilities. There's things like that on the NMSU property and one person said to me is that really a difference and I said look, you take a pen and you stick it here and you stick it just that much father away. To the neighbors, that is a big difference. It also is the entrance to our neighborhood. Now, BNE Enterprises the owners of the abandoned gas station also has a half built storage facility carwash, something there that has a bunch of graffiti on and now we want to put an ugly cell tower there too. If this guy can devalue our community any more or I'm sure he'll find a way it seems like and so we're asking okay, one is this really the best place for it, the entrance to a community when there are alternatives and I'm going to read an email. I talked with Wayne Savage. You guys all know of Arrowhead Park is directly across the road from where the proposed site is and Wayne Savage sent me an email we had a conversation this morning and I asked him to send me an email so that record of it says "per our conversation, I did meet with Tectonic Engineering in Albuquerque on Friday, January 8th. Now I'll make a point.

Wayne Savage talked to Verizon and they said well, if you can come up to Albuquerque, Wayne Savage from Arrowhead Park drove all the way to Albuquerque to meet with a representative from Verizon, they might be a little interested. We met with them January 8th to discuss possible siting of a Verizon tower and the Arrowhead Park land, there's supposed to be a site or sites exist within the northwest corner Arrowhead Park adjacent to the Tortugas arroyo just east of I-10 and Sam Steel Way that could meet Verizon's signal coverage map needs. I provided a diagram to Tectonic Engineering identifying possible locations and told them I was open to further discussion or conversation if desired by them and Verizon. I have not heard from them since providing the information. For the record, the possible sites I have provided are not on the main NMSU campus but adjacent to it in the Arrowhead Research Park facility and this is kind of the...what we've been getting from Verizon so as a community we're looking to one, preserve the quaintness of our community. We can only do so much. So I ask you today, if you vote no today, Verizon is going to have to go back and make a choice. They're going to have to decide we're going to see you guys in Federal Court, the City in Federal Court, right? I would venture to guess the lawyer would agree with me on that. If you vote no, they can sue you in Federal Court and then they have a chance of losing either because all this information is going to come up in Federal Court and I can't see a judge looking and saying okay, from this dot you have four locations within you have in the area and that you're saying that you can't provide coverage and second off there was a proposed location right across the road that you guys turned down. I don't see them going anywhere in Federal Court so I think they would be wasting their time in Federal Court and so I don't see it going that direction but if you vote no that's where it's going to go. That's the worst they can do is to take you to Federal Court.

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What would be the impact to the City? Well, in doing some research and looking at an article written by the League of California Cities. They said the 1996 Act basically says the most that the Federal Court would do, I'm going to paraphrase this. If you want the exact copy of this, the most the Federal Court would do is require that the City would go ahead and grant it but they can't come back for damages, okay? So at risk for the City the Federal Court would come back and say well, you've got to let them have the place anyways if you vote no but there won't be damages to the City. Maybe a little legal costs but that's what we have a City Attorney for I would suspect. You can vote to amend. I guess the biggest problem with it is one, it's the gateway to our community. Two, it does effect views. Three, it's right next to residential zoning. If you look at the maps that they had, they were very quick to go by, there's a house that will probably be within 200 or 300 feet of that tower. There is a house right next to where they're proposing to put it. So, that's why it had to go to the SUP and that's why it went to the zoning committee. They looked at it and said no. So as a neighbor, please do some planning and zoning and looking at this and saying there are better places for this and that's what we're asking the City Council to do is to vote no on this so Verizon could go back and do a better job of placing this tower. Thank you.

Mayor Pro-Tem Smith said thank you, Mr. Braker. Yes, sir?

Larry Brooks said my name is Larry Brooks and thank you for this opportunity to address the

Council. I've been a resident in University Mesa for....

Mayor Pro-Tem Smith said and Mr. Brooks, I'm sorry. If you could point that microphone directly at your mouth. Thank you, sir.

Larry Brooks said okay. I'm a resident of the community adjacent to the proposed cell tower for 28 years, that's in the University Mesa and the other Estados Scenarios is right down the road. Mr. Smith so eloquently put a lot of the things that concern the community so I will try not to rehash that but one of the things that is amazing to me is that Verizon started this process back in September and again the P&Z Commission said okay, prove to us that you've done the due diligence and come back to us and this is like the fourth time we're hearing this proposal on this...on the same site with virtually no contact of the other site participants, at least until January when he contacted Arrowhead or late in November when he finally contacted Tortugas and again we have two Albuquerque people here that their only vested interest is getting the site built and getting out of here and getting I presume their commissions on the site built. They don't really have a lot of community involvement with what's going on here. So, the planning and zoning commission was again listening to what they were saying. We were listening to what their engineer was saying and there's a couple of things here that are very erroneous that have been proposed and I'd like to bring them to the Council today. One was one of the initial project documents that was generated is called a SARF. It's a site acquisition request form and was generated actually from the RF engineer who is in the audience today, Mr. Alaaldin. And in this document and I don't know if this in the packets that you've been provided in the past but this is certainly somewhere in the record and I have a copy of that in front of me right here. They have proposed different sites by doing the RF engineering that goes with this and the desired location site was in Tortugas originally and it was right by a ballfield, which is about a quarter mile north up Stern Drive away from the proposed site, which they're pushing on us. This site has a desired location that was an exhibit. It was called exhibit five. It was on page 3 of a June 23, 2015 report that came from the engineering firm that they commissioned to look at all these sites, Greg Best Consulting, Inc and at that time they said the Tortugas site was the desired location site and I've since spoke to Mr. Hamdi, this was off the record and he said a lot of these radiating things to accept your signal and to reflect it back to you and give you cell phone coverage can be steered so that they don't interfere with other locations. The other location right down the road of course is the Whiskey Dicks site, which is right at Union and Stern, which is a huge, huge cell tower. If you go by there, there's a ton of stuff hanging off there that is amazing. So again this report does say that the best site was in Tortugas. Now what we've seen here is that when Verizon was told by P&Z to go and look at other sites, they took the path of least resistance. Rather they ignored P&Z and they just came back with the same proposals the next time. So the next time the P&Z said no, we're not going to let you go through with this because you haven't done your due diligence and they voted no. So what does Verizon do, they come back to you with a legal avenue, trying to "maybe scare" the City into accepting this site, again still without doing the due diligence to look at the other sites that are available. So that's one of my main concerns is that, you know, the P&Z looks out for the community. These guys from Albuquerque, they just want to get out of here with their commissions. So that's what I'm looking at and I don't see that.

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Now there's been a blight of these cell towers on our City views, not just for our little community that has to drive past this cell tower every single day. This is the only way in and out both of these communities so you're going to drive right past the cell tower. In that report that I just mentioned, there were also these artist conceptions and I don't know if you've seen these in your packets but they show that there is nothing around there, no trees, nothing where they're proposing to put this tower right next to this Qwik Mart because right now there is nothing there and that's what it's going to look like and camouflaging this of course if you have a pink elephant, you camouflage a pink elephant, it's still a pink elephant. It's still going to stand out. So, you know, it was pointed out that there are better places to put this, that the revenue stream from leasing the land from where they do put it would benefit either the Tortugas community or the NMSU community, which is much better for everybody I feel so I think that Verizon is taking the path of least resistance and they're trying to stuff this down the throat of our community. Now again I go back to a conversation I had with a Verizon engineer and he said if he knew the community was going to be this opposed to this site, he would have pursued another location. Again, it was the easiest site for them to deal with because it was already commercial. It was a private entity. They didn't have to deal with, you know, a Tortugas Council or the NMSU Council so I believe that they have not done that due diligence, that they've been neglect in trying to pursue other avenues that would be more acceptable to the community that would provide the same coverage of the site they're proposing that would be again acceptable to the community.

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Now this community is already built out. There's really not a lot of open lots in here. There's not a lot of new people coming in and I know that when I get home on go on a wifi network so I don't even use the data. The data that this new tower would cover I'm sure would be mostly the data that's coming off of I-10, the traffic going past and so, you know, why tell me that I'm going to need it because I'm going to have dropped calls when I don't have dropped calls now. So again, I go on a wifi. I'm on a limited budget. I'm a retiree. I don't have the money for unlimited data. You know, maybe when you're in a car you have to use those data avenues but it's not going to benefit me as a community. And I want to say I went around before the zoning commission and we got over 30 names on a petition just from University Mesa alone opposing the cell tower there. So he showed one email from one person that said I don't give a rats. Who knows whether this person is a renter or whether he actually is a homeowner. Again, I've been there 28 years. I've spoken to a lot of people in the community. They are very adverse to this. Again, we have beautiful mountains that surround us. That's one of the things that endears Las Cruces to us is the views of our mountains and our majestic surrounding mesas so please, don't let them get away with being negligent and forcing this type of facility in a place that when there is such better places, more applicable places to site this tower and very close that would do the exact same job and again I just admonish you that he says you're going to lose 911 calls. Nine one one calls will drop everything else off. Nine one one calls will go through. That's not a problem. So if they don't get this built this year and it takes them another two years to get it through to build the Tortugas site or the Arrowhead site so be it. It's not going to affect emergency services and I don't think it's going to affect me and my house because again I have wifi. It will affect....maybe you'll lose some calls when you're in your car. I go through west Texas and the towers are 10 miles apart. Here, they're going to be one mile apart so I can't see a

lot of loss of signal. So, thank you for your time. I appreciate it and have a wonderful day.

Mayor Pro-Tem Smith said thank you, Mr. Brooks. Mr. Babington, was there anything said about the legal situation that you felt like needed to be addressed before we go to the Council?

Rusty Babington said Mayor Pro-Tem, Council, I believe you're all aware that when you're voting on this particular issue what the courts generally look like is a reason either to support or deny the actions, the votes so really what we basically need to do is when you vote, and Mr. Williams may want to have some kind of rebuttal, is that you do need to state your reason why you're voting the way you are.

Mayor Pro-Tem Smith said thank you, Mr. Babington. Mr. Williams?

Mark Williams said I would like to correct a few things that were said and have some rebuttal because we did note that we went to Arrowhead in fact and in the report, in the letter I gave you, I gave you emails or what it is. I'd like Mr. Gutierrez to come up and tell you exactly the due diligence that we've already laid it out in a letter we sent to you but in addition that Mr. Savage did not come all the way up from here. He happened to be there so Mr. Gutierrez if you could please come up and give the due diligence that we've already laid out but discuss the efforts with Tortugas and with Arrowhead and why they aren't viable solutions.

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Les Gutierrez said Mayor Pro-Tem and Councillors, we appreciate the efforts that were done by the citizens and I made contact with Mr. Braker and Bill and we'd also like to thank the tribe. I met with Dominic. He's been very, very helpful and the tribe would like to have a lease and we would like to work with them but I'd just like to be brief and tell you what happened when I met with the tribe and I met with Arrowhead. In mid November, I had a first hand opportunity to meet with Dominic. He was very helpful and we looked at two possible locations. One was right near a cemetery and the location looks like it would work so before we could even proceed with the tribe, I sent an email to Mr. Steve Meadows who is the senior planner and I asked him would this site work and I think the information came back as the site was too small, it does not meet setbacks and it would require a lot of variances. Dominic was kind enough to show me another location that is a little further to the west on San Felipe and it's almost right adjacent to the subdivision where Mr. Braker and Bill live. We looked at that property. It's a vacant parcel. It's too small. The people at Doña Ana County are telling us for 75 with structure to meet a two to one setback we need a 300 x 300 foot parcel to meet the variances and that would work. So, that parcel didn't work. In early January, I got back in touch with Dominic and we looked at a parcel that is called the ballfield. The ballfield is a large area that could work in our design confirmed by Mr. Alaaldin. So, we took that parcel that is called block 32 and I sent that parcel to Doña Ana County and I had Mr. Meadows look at that and he said Les, you're getting better but it still won't meet the setbacks. You'll have two variances to go through and I can't assure you that it will be approved so there is some speculation and while we would like to work with the tribe. I think they want the lease. The income would be beneficial to them. If we can't make the underlying zoning work and then we have other processes that Mr. Braker or Bill may not be

aware of, the lease is only part of it and the location is only part of it. We have to do a full title. We have to verify the survey. We also have to do drives. In addition to that, we have to do phase I and EPA historic review. There could be a bone that would show up near the cemetery and that kills the site. So while it's commendable that we didn't talk to them, we really did and Dominic is welcome to come up and visit and confirm those things. In addition, I was grateful that Mr. Wayne Savage's wife happened to have a...she was in Albuquerque for a choir and she joined him and he asked if I could meet with him and I met with him, which was his purpose for the meeting. He spent about a half hour with me and he showed me the full development plan for Arrowhead Park. It sounds like just south of the park there's going to be another big interchange that will be going in, which will create a lot of traffic in the next couple of years and most of the parcels are spoken for. He sent me an email and along with the email he sent me a survey of a small area that's to the northern part of their property that's encumbered by a power line easement. We've worked near power lines. We're not sure this will work. There's also underlying easements that go underneath the ground including the Elephant Butte District Irrigation Easement. That requires historic review. So I got back to him and thanked him and I said it's going to take some time before we can get back to you to verify if this site would work. My best guesstimate it would take 6-9 months after we've looked through the title policy and we've cleared the easements, gotten with the power company to verify that our pole would work for them. That's a possibility but it's very speculative. I just wanted to be clear for the record that we did spend quality time, you know, with Dominic and we also spent quality time with Arrowhead. Thank you.

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Mark Williams said as a result of that we have exercised good faith on a number of occasions because that was important for us and the law requires us to exercise that good faith. We've exercised that good faith. We've gone again and again and again, those sites are speculative and we've laid down in our materials the law and I know Mr. Babington understands that, that there's no....we can't....there's no need to go further when we've done that good faith and we have no...it's purely speculative whether we'll even be able to get those locations whereas here on the Stern Drive site it meets all the requirements of the SUP. It meets all the requirements of Federal law and your own engineer said, and I think it was Mr. Brooks that quoted what that said, this was the best location. It meets your City code and meets Federal law and we assert that it should be approved. So thank you for that opportunity for rebuttal.

Mayor Pro-Tem Smith said thank you, Mr. Williams. Mr. Brooks did you...okay, we're going to limit it to one rebuttal on each side and then we're going to get on to the Council questions. Yes, Mr. Brooks?

Larry Brooks said okay, this site that I said was the best site was the area on Tortugas that is noted on that document that was prepared by Greg Best and it said it was the best site and it's about a quarter mile or a third of a mile north of where this tower is proposed. That is not the best site. That was not the best site in our surveying report, okay? It was the one on Tortugas.

Mayor Pro-Tem Smith said thank you, Mr. Brooks and Dominic are you still the president of

Tortugas Corporation, is that correct?

Dominic Fierro said I'm the immediate past.

Mayor Pro-Tem Smith said immediate past president, I'm sorry. Did you have a comment that you wish to add to this discussion before we went to the council questions?

Dominic Fierro said yes please if you may. I'm the immediate past president of the Corporation. I've been president of the Corporation. It's really...our legal name is Los Indiginos de Nuestra Senora de Guadalupe. That's a mouth full. We understand that. Tortugas Pueblo, the corporation, those are all nicknames of ours. There is a lot of conversation and dialogue concerning this. I, like the new Councillors, are kind of late to this party. We were late to the party because nobody talked to us about this party until after November the 2nd. On this proposal...on this thing that Mr. Brooks was talking about, June the 3rd of 2015 that Tortugas was the best site. I've been president for four years. My predecessor was president for three years. In the seven years, nobody from Verizon ever asked us anything. We have multiple parcels of land. Les, Mr. Guiterrez, is correct. Les and I have done a lot of talking lately and I'll stress the word lately. He did ask Steve concerning the special use permit. They'd have to get one here too. They'd have to get one at the county. It's a little different. You have P&Z. They have ETZ. A little different. Same difference. However, Steve in the last email, the Mr. Williams provided in the presentation was dated November the 19th. There's actually an email from Steve to Les and I dated January 9th where he did say we did see a cell tower case approved late last year requiring two variances so it is not out of the question. So, the county's already saying it is possible. It's not out of the question.

So, we are a community. We are a small community. We have been encassed with the City around us and it's a good working relationship. We have all city utilities, water and El Paso Electric. When it was first brought to my attention in November, there's a community meeting every month and at that community meeting I went and asked the community members, the ones who live there who are present and I said do you want this? Do you want us to support this? Do you want us to work with them on this and the answer was yes if you put the money back into the community, which we would do because ultimately that's our purpose is to maintain what we remain having in our community. So such ultimately yes, they would have to go through the county. Yes, they would need a special use permit just like they're asking for here. Yes, they're asking for a variance, the same thing they'd have to do over there. If we were to get the lease and the contract, we did provide three options, three alternatives. In the email and the ones Les was talking about it was a 75 foot tower. I believe they came to you for the variance for a 65 foot tower so I mean I think they can go to the County with this same thing. Our residents don't oppose it. Our residents are okay to have it there. There was another part of this presentation where it said there's residents along San Francisco Avenue that knew and who are opposed to this. There is no residences or houses near the proposed area on San Francisco Avenue. You have to come way into Tortugas. It's not anywhere near Stern Drive. So, I was a little concerned with that. He also mentioned no clearly available or guaranteed alternatives, speculative. There

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are no viable good land options, least intrusive. We're okay with you being intrusive. We're okay with it because we think it will benefit us and it benefits the community as a whole because we're all in this together one way or another. Thank you.

Mayor Pro-Tem Smith said thank you, President Fierro. Alright, having heard from different parties and two rebuttals, members of the Council, questions for any or all. Councillor Pedroza?

Councillor Pedroza said alright, I'll start. I have a series of questions and I'd like to preface my remarks by saying that I understand that sometimes people are a little tiny bit unreasonable. They say well, I like my cell phone but I don't want that tower. You know, that's not something that's going to be a winning argument with me. At the same time, however, there are a number of things in here that make me very uncomfortable about saying yes. Some of what former president Fierro was talking about certainly are some of those but in addition when you guys met with us in November, I remember hearing possibly from you, possibly from the City staff that the P&Z did not articulate any reasons, which we have been told right now and on which I've sat on the ETA so I know that whenever there is a decision made, you have to base your decision on some articulable reasons and you have to say what those reasons are. So I'm wondering if maybe this issue is not really ripe for review by the City Council, Mr. Babington. We don't know what the reasons were that the P&Z denied it, but we do know that they denied it. I have read the packet and I have seen the dates on all of the emails and so forth and that gives me an awful lot of questions as well. I remember in your letter you spent maybe a page, a full page talking about how the Mayor had put the onus of finding the alternative site on the people opposed to it. I'm not sure that the City Council has the authority to change the burden of proof. Burden of proof means who has to prove to the satisfaction of the rest. You do undersatnd that. Okay. So, you know, it was very nice of the Mayor to do that, to say okay, we're going to make the people who are opposed to it show.....bear the burden of proof that but I'm not sure that we have that authority so I would not fault them if they had not. You accepted it yourself and I think that you needed to do that. You didn't even need to mention that the onus had been supposedly transferred.

Another thing that kind of bothered me is in exhibit eight I believe or was it exhibit five? Please bear with me. Exhibit eight. Exhibit eight page one. "Hi Les" and then he goes down through one, two, three, four, five, six, seven, eight, nine, ten. About the ninth line. "Certainly the easiest and most expeditous path would be to simply not pursue and go back to the City of Las Cruces." So, we're easy. And you didn't want to go back to the county for whatever reason and stated "We tried." So again, if it's a choice between the county and the City, you know, I don't think this is such a good idea, certainly not very politic to say well the City is easier than you guys so we'll just go with the City. That doesn't persuade me.

I also am a member of the MPO, the Metropolitan Planning Organization, and last week we had a meeting at which Wayne Savage presented and he presented the plans that the City has to ask for another exit off of Interstate 10 to go into the southern part of Arrowhead Park. I suspect that a great deal of coordination is going to be necessary because of that application. They are looking

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at a number of steps that they have to comply with and for you to say well, if we hurry this up and we go to the City, that's easy and we get an approval and when we show them that hey, this is the best and this is the worst....I'm sorry. I will refrain from any kind of....that is might slow their proposal down, it might also slow your proposal down, but I think it does need to be looked into, maybe some due diligence because those two things are going to impact each other. The exit from the interstate onto Arrowhead Road and the cell phone tower are certainly going to impact each other and that has to be studied and the consequences and the effects and whatever other need to be dealt with.

Finally, we just heard from President Fierro and he presents something that for me is very persuasive, if in fact he has land where none of the residents are objecting, where in fact you could simply go and present to the county this is what we've got, these are the residents that do not object, go back to what you have told us about 65 rather than 75, if that. Maybe they don't even object to that and then I don't think you would have a problem. So possibly I would like an answer, Mr. Babington, if not right now, I wouldn't mind if it were some time during the week as to whether or not the fact that the P&Z did not articulare their reasons makes this ripe for us or not. I don't think it does.

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Mayor Pro-Tem Smith said Mr. Babington, do you want to address that for us, please?

Rusty Babington said Mayor Pro-Tem, Councillor Pedroza, the answer to your question is it's before you. Whether or not it was properly sent up here with the proper reasons really isn't a question that you can answer at this time. Yes, ma'am?

Councillor Pedroza said no, I'm not asking for me to answer it. I'm asking if you would answer it because if we're doing this needlessly because it's not ripe yet for us to make a decision, then why spend all this time and all of this effort.

Rusty Babington said yes, ma'am. You certainly have the option to do a couple of different things. One, you can hear it. You have today to make a decision on it up or down. Two, could you refer it back to P&Z? You might be able to do that. The difficulty you have there is that the telecommunications act of 1996 as interpreted by the Federal Communications Commission basically says that for a new cell tower municipalities essentially have 150 days in which to take action on that proposal. This proposal was submitted to P&Z in May of last year. So we've exceeded it at that time by a bit so that may be difficult if we send it back. Certainly the applicant may have other options at that time so....

Mayor Pro-Tem Smith said thank you, Mr. Babington. Thank you, Councillor Pedroza. Councillor Eakman?

Councillor Eakman said yes, thank you, Mr. Mayor Pro-Tem. I do have a couple of questions. I think I'll refer them to Mr. Babington first because I'm not sure of the completeness of the record and whether or not I can ask those questions. So the questions in order are is there auditory noise

that would be coming off this cell phone tower? Is there any evidence based studies that show negative effects of radiofrequency waves? If there was a dark skies ordinance in place, would the cell tower night lighting violate that? And has anyone found a competent property value effect of this cell tower they could present to us? Those would be my questions and I'm not sure who could answer those.

Mayor Pro-Tem Smith said Mr. Babington, would you like to address the ones which you can address and I'm sure Councillor Eakman would be glad to supply you with a repeat if you need him to.

Rusty Babington said Mayor Pro-Tem, Councillor Eakman, let me give it a shot on some of them. With respect to the audio, I really couldn't answer it. I haven't spent that much time personally underneaht cell towers to really give you a good answer on that one and I'm not sure if there's anything in the record that specifically addresses that. With respect to the dark sky ordinance, I am not aware of whether or not there has to be a light on the top of a cell tower. I don't think so because I think that's based on height and I don't think at 65 feet there is a requirement for a light if you will at the top there. With respect to comparative values, I don't have any information on that, sir. And I can't remember what the second one was but it was concerning evidence of....

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Councillor Eakman said radio frequency waves negative health effect.

Rusty Babington said Councillor Eakman, the only thing I can tell you is that the case law that I've reviewed suggests that that does not appear to be a concern. It does not appear to be a health concern at least reading the laws and the decisions related to cell towers, but that's only in my reading.

Councillor Eakman said and my reason for asking you is to ask if I could ask some of the witnesses whether or not they could answer those questions.

Rusty Babington said as a judge you normally get to ask a lot of questions. So Mr. Eakman, yes sir as a councilman you can in this particular proceeding.

Mayor Pro-Tem Smith said thank you, Mr. Babington. Councillor Eakman, would you like to direct your questions to anyone in particular?

Councillor Eakman said yes, I'd like to ask the folks who have testified whether they have information on those four questions I just asked and whether that's part of the record or not.

Mark Williams said those were not part of the record so they were not. There's no noise coming from off of the cell site. Is that correct?

Hamdi Alaaldin said this is Hamdi Alaaldin again. There is no noise coming out of the cell

tower. A lot of the cell towers require by Verizon to have generators. The only noise possible is coming out of those generators and that's only in the emergency. If the City loses power, the generator will kick in and that's the only noise and it won't be a noise that you could hear from outside. It would be very small. As far your...could I go ahead and ask a couple of questions? On the lighting every site that Verizon proposes has to go to a FAA approval and at FAA approval will tell you if that is required lighting or not and in a majority of the cases if they're not close to the airport I think the limit is 195 feet or 200 feet. So in this case I don't know if it applies but it does have to go through that process to make sure. I think don't it's....at this location I don't think it's....because there's not an airport runway within 600 feet away or close to that. So, I don't presume that there would be lighting but we have been surprised.... but regardless it has to go through the process and they'll tell us. As far as the health benefits, these....

Mark Williams said in terms of health 47-USC section 32-C-7B, Mr. Babington can give you the precise quote notes that the decision cannot be based upon environmental effects of radiofrequency emissions. So that's not something that can be part of the record and there is no evidence in terms of property values whatsoever here so that's what I can offer.

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Councillor Eakman asked does anyone else want to respond to the property value question?

Mayor Pro-Tem Smith asked Mr. Brooks, do you have some information that will help us on the property value question? And Mr. Kyle, are you....

Larry Brooks said I don't have any empirical, you know, data but as I said this is an older community that is built out and I believe the property values would suffer if the cell tower goes in right there because again it's right at the gateway to these two communities so it'd be both University Mesa and Sorrentos I believe it would. I believe it would effect it. I can't give any empirical facts.

Mayor Pro-Tem Smith said thank you and thank you, Mr. Brooks. I believe Mr. Kyle might have the empirical piece.

Robert Kyle said Mayor Pro-Tem, Council, I don't have the empirical piece except to say that the tower is an allowed use within the commercial zone so arguably the use and the impacts of that use, financial, etc. are wrapped into the fact that it is an allowed use by right within the commercial zone. What makes this case particularly different is because it's located next to a residential zone, it has to go through the special use permit process, so that the planning and zoning commission can look at and take into account any impacts to that adjacent residential area. The specific cost or financial analysis on property impacts are not part of that special use process but just to shed some information. Ordinarily a tower is an allowed use by right within the commercial zones.

Mayor Pro-Tem Smith said thank you, Mr. Kyle. Mr. Smith, did you have some empirical data

that can help us here or what did you wish to share because basically we're looking at the empirical data at this point if we've got any available. Otherwise I know impressions....you'll have to share with us at the microphone, Mr. Kyle.

Robert Kyle said if I may make one other statement, Mayor Pro-Tem. In regards to the outdoor lighting darkside ordinance, the City does have an outdoor lighting ordinance and any lighting that would be associated with the tower site would need to come into compliance with the City's outdoor lighting ordinance except as it may be of course exempted under Federal requirements, FAA, etc.

Councillor Eakman said that's very helpful.

Mayor Pro-Tem Smith said thank you, Mr. Kyle. Mr. Smith?

William Smith said I'll be very brief and I apologize for the coughdrop. I'm recovering so my mouth has been dry with the medication. This is not anecdotal per se nor empiric per se. I'm a neighbor right there. My backyard is the line of sight so speaking from an ant of one I can assure you that that would be obstruction relative to my house and I can assure you that it will be a decrement...negative on my property values. We've lived in that home, we've raised our children in that home. We've been there forever.

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Mayor Pro-Tem Smith asked and Mr. Smith, would you say that you purchased your home largely because of the view of the mountains or what is the impact that you're describing?

William Smith said it was an entirely beautiful neighborhood. We have walking trails that now yo're going to be able to see that tower from the walking trails. As Mr. Brooks indicated, it's an established neighborhood. Again, we've lived there for quiet enjoyment of our backyard, raising our children in a quiet community and so it it were across the street it would not be in the line of sight as was already pointed out so eloquently by my neighbor Mr. Braker.

Mayor Pro-Tem Smith said thank you, Mr. Smith.

William Smith said thank you.

Mayor Pro-Tem Smith asked Councillor Eakman, did you get the answers that you were seeking and do you have an additional one?

Councillor Eakman said I have no additional questions. I would just like to make a conflict or make a comment that the conflict I'm feeling is with the economic development needs of our community and this being very close to the research triangle of Las Cruces, which I think is crucial to our dynamic economic future and the research that's going to go on there and so in a way I feel that we very much need better reception and we're going to have to keep on needing better reception into the foreseeable future. I also understand the impact this is going to have on

persons and the way they view the mountains and daylight and so I'm going to be very sensitive to that as we go to decision making here. Thank you.

Mayor Pro-Tem Smith said thank you, Councillor Eakman. Any other Council questions or comments? Yes, Councillor Sorg.

Councillor Sorg said thank you, Mr. Mayor Pro-Tem. I've got a few things here that I was concerned about through this whole discussion. It appeared to me, and I could be wrong, but it appeared to me that I heard some conflicting statements during the testimony here today that worries me. Apparently maybe some parts of someone's statement may not be very accurate but I would like to go on to this presentation here. I would like to see the coverage map of the towers that are there now if you could put that on the screen.

Mark Williams said Councillor Sorg if can just give me just a moment, please.

Councillor Sorg said sure.

Mark Williams said I think I have to go....

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Councillor Sorg said as you're bringing that up it was concerning me that when the applicants went to the county and asked for a cell tower in Tortugas, they only asked for a 75 foot cell tower when you were willing to put a 65 foot tower in the City. It didn't seem to me that....and then of course that resticts the area you have to have so that was bothering me. Yeah, that's the map.

Mark Williams said Mr. Wilder, Mr. Gutierrez, if you could come up here please so we can make sure we answer....

Councillor Sorg asked could you put the pointer of the computer monitor there? Put it right over where the tower is you're proposing it to be, which would be on Stern Drive just a little ways away from Agave, right?

Mark Williams said yes sir.

Councillor Sorg said and the arroyo.

Mark Williams said yes sir.

Councillor Sorg said no, that's not it.

Mark Williams asked you want to see the....

Councillor Sorg said oh, your hand is there. I was looking at the arrow. I'm sorry. So the Blackhawk....yeah, that was it. The Blackhawk. Okay. It seems to me if you were moving it just

slightly to the west it wouldn't be any worse for sure for coverage and just slightly to the west I see is the Tortugas site. Okay, I'm just saying that. I am a little bit concerned about how well you explored the ideas of the alternate locations in NMSU. I'm very familiar with the Arrowhead as we are planning to do some development there. I know all about the exchange at Arrowhead Drive and I-10. If I read Mr. Savage's email correctly, it would be just across the highway from the proposed site you have now. I have a question here that I'm having a hard time reading. Oh, yes. Can you inform us what a landowner would get for compensation on his lease?

Mayor Pro-Tem Smith said Mr. Williams, I'm sorry. You're going to have to direct your mouth to the microphone.

Mark Williams said yes, I'm sorry. That is a matter of contract with Mr. Hayes. He's not here. He would get compensation. I mean that's true.

Councillor Sorg said I guess really my question is would the compensation be any different with the state university land across the highway or the Tortugas than it would be on this private land?

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Mark Williams said we haven't gotten to a contract standpoint with them because while Mr. Fierro was kind enough to mention that they'd like to do it, we don't have any assurances. As we've said, it's speculative whether it would be approved by Doña Ana County and yes, we did communicate with Arrowhead. Yes, you have the emails. We submitted those. We're glad that you have all of those and he has not made an offer to us at this time.

Councillor Sorg asked I mean would you offer the same compensation for all three locations?

Les Gutierrez said yes, we would.

Councillor Sorg said okay.

Mark Williams said yes sir, we would but the Arrowhead folks have not come to us with any proposal.

Councillor Sorg said I know.

Mark Williams said so we don't know....it's speculative if we can do a deal anywhere else except here.

Councillor Sorg said yeah, I understand but I can see they're willing to talk from this email about that and I know for a fact the Arrowhead is looking for income off that land, revenue source for operating the university and it certainly would fit them well if everything is okay there. There's a general dynamic emission systems that has land right next to it. It looks like it's even larger than the size of the land you're proposing now. It seems like you can get a better deal over there than

you can't but I'm just speculating of course to...

Les Guiterrez said Councillor Song...I'm sorry. Councillor Sorg, I apologize....

Councillor Sorg said yes.

Les Gutierrez said I did have a good conversation with Mr. Savage and he specifically told me that they have expansion plans among Arrowhead and the locations that he told me these were the ones that are available were right near a power line easement, which is on the further most west side of the property. He said everything else you can pretty much earmark but these locations are good and that sounded fine. We didn't talk about leases at this point but we said we'd be open to a lease. The difficulty that we had is when he sent me the survey in the area, they are encumbered with numerous easements, underground and both aerially easements. So that was about a week, eight or nine days ago so we haven't gotten any further than that and I relayed that to him in an email that we'd love to follow up with you but this is a big concern and that's where we left it for the record. Thank you.

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Councillor Sorg said okay, Mr. Pro-Tem, Mayor Pro-Tem. I'm okay with that then.

Mayor Pro-Tem Smith said thank you Councillor Sorg. Councillor Gandara.

Councillor Gandara said yes thank you, Mayor Pro-Tem. Thank you for your presentation and for the citizens. From my behalf someone mentioned something coming late to the party and that is true but I want you to all know that I've gone back and reviewed previous meetings. I've looked at notes. I've looked at packets and I am very concerned about the due diligence as some of my colleagues here have spoken about. I'm also concerned about the fact that...I'm sorry. Let me get my notes. I'm concerned about the due diligence but I'm also concerned about the fact that we will lose service if you will and echoing Councillor Eakman's points about that being the hub, the research hub. So, I am very sensitive to the neighbors but I'm also very concerned about the past president's commentary about just recently having the communication and just speculating. You keep using the word speculate. That Mr. Meadows speculates that there will have to be all these permits and variances, something that you've already come to us as the City and I am concerned that this is a bit....it was not the time that the P&Z did not state why they were in disagreement of that. So essentially I just had the commentary. I don't really have any questions. Thank you.

Mayor Pro-Tem Smith said thank you, Councillor Gandara. Mr. Brooks, I think we're going to be okay here. Thank you. At this point then if we....we can't allow public comment at this point so we would be basically be ready to go to the vote. I would like to clarify that a vote for yes is overturning the planning and zoning commission's result, which would then be a yes to them putting a cell tower at Stern Street location. A vote no would be to basically stay with the planning and zoning decision previously, which would disallow them their....my person comment is that based on what was in our packet although you have provided us with what you have

mentioned as a more recent conversation with Mr. Savage but it did sound like the conversation was open to ongoing pursual of discussion on the Arrowhead site, which is on NMSU property but isn't distinct as Mr. Eschenbrenner's purview so I do think that that is a question and certainly Past President Fierro's comments about what might be possible there, bring up some concerns. Mr. Williams, did you want to make a final comment?

Mark Williams said yes. Thank you very much. We appreciate the discussion about the due diligence. We think we've demonstrated that we've gone through and performed due diligence but due diligence is more than just talking, which we've done with them in pursuing those issues. We've also gone to Doña Ana County and have noted in the record that there are variances that will be required. Mr. Guiterrez also noted that when talking about the Tortugas sites is there will be historic preservation issues, NEPA issues, other environmental issues that need to be reviewed. So there are a number of factors that would have to be determined before those other sites could even be viable and that's why they're not and they're not feasible. This site is feasible. It is the only feasible site that is available and we assert that we have conducted all of the appropriate due diligence. We have gone back not once, not twice, but three times and four times to discuss further and the other locations are speculative at best.

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Mayor Pro-Tem Smith asked Mr. Williams, just out of curiosity there would be no NEPA concerns or archaeological concerns at the site that you're referring to on Stern Drive?

Mark Williams said we've conduted that.

Mayor Pro-Tem Smith said those have already been done

Mark Williams said yes.

Mayor Pro-Tem Smith said alright. Thank you. I did allow Mr. Williams a final comment. I suppose that Mr. Braker and I'm sorry, Mr. Brooks. If Mr. Braker covers it, I hope you'll allow that to be it. Mr. Braker?

Philip Braker said I appreciate that Verizon had a half hour before any of us got to talk. I really didn't want to give them the final say and that's why I'm here. First off, you can vote no. The ramifications of it or the worst that they can do is take us to Federal Court as a City and challenge it and in a Fedearl court if they would win they could force the City to overturn it. If you vote no, Verizon will have to make choices. They'll have to choose to either go the route of the Federal Court. They'll have to choose to go to the County or go to Arrowhead and make it work there. A vote no is not a bad vote. It does not stop a cell tower. It does not stop progress in the community of Las Cruces and I want to make that point very clear. As communtiy residents, we're not here to stop the progress of the community. We're just asking that smart planning be done in the community. Things like cell towers be put in places where they really should be put, Arrowhead Park Development area or into the Tortugas area where it's going to help the community. That's what planning is all about and that's what the residents are asking for in this

case and a vote no helps us get that. Thank you.

Mayor Pro-Tem Smith said thank you, Mr. Braker.

Councillor Sorg said Mayor Pro-Tem.

Mayor Pro-Tem Smith said yes, Councillor Sorg.

Councillor Sorg asked could I ask Mr. Braker one quick question? I thought you said at the beginning just now you can't vote no.

Philip Braker said I said you can vote no. I'm sorry.

Councillor Sorg said okay. I didn't hear that clearly.

Philip Braker said you can vote no. Yes.

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Mayor Pro-Tem Smith said we are allowed to vote either yes, no or to table or to amend. Mr. Brooks, please make it very, very brief.

Larry Brooks said you mentioned that the P&Z that they did state why they didn't do it. It was because of the lack of due diligence and they have waited until November to contact all these other parties and saying oh it's too hard to do so they did not do due diligence. That's why P&Z really voted this down. If you read the minutes, you'll find that that is the reason why they voted it down and I think that's the reason why you should vote this down.

Mayor Pro-Tem Smith said thank you, Mr. Brooks. Thank you. Alright, one question for Mr. Babington before we vote. In this requirement that we state our reasons then as we vote we should say yes because or no because? Alright and again a yes vote would be in support of overturnng the Planning and Zoning Commission vote. The no vote would be against that. Is that correct?

Rusty Babington said Mayor Pro-Tem and Council, you need to give a reason whether you're voting yes or no. That clarifies all the issues for the applicant as well as opponents and then if it goes up to a court, the court knows this is exactly what Council was doing at the time.

Mayor Pro-Tem Smith said thank you, Mr. Babington. Alright, Ms. Lewis.

Linda Lewis said this is for the approval of Resolution 16-104. Councillor Gandara?

Councillor Gandara said no. I don't believe due diligence was done on this.

Linda Lewis said Councillor Pedroza.

Councillor Pedroza said no. I believe that due diligence was not done and I also believe that it's not ripe for the City Council because the P&Z was not required to state their reasons. Thank you.

Linda Lewis said Councillor Eakman.

Councillor Eakman said I vote yes. I believe Verizon has proven their point. I understand the inconvenience to the neighbors and I empathize with that but I think for the good of the City and our economic development in the future we should move ahead. Thank you.

Linda Lewis said Councillor Sorg.

Councillor Sorg said I vote no because I don't believe the company has explored the alternative locations. They've offered no specifics or not specific enough for the reasons for other locations. I just don't think they worked hard enough to do it. I think there are more suitable locations for the cell phone tower and I agree with Councillor Pedroza that the P&Z did not do their job correctly in the first place.

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Linda Lewis said Councillor Levatino is absent. Mayor Pro-Tem?

Mayor Pro-Tem Smith said thank you. I will vote no as well. I believe the due diligence piece needs to be addressed. Clearly there were in my mind plenty of indications that conversations could have gone further with both NMSU at Arrowhead Park and at Tortugas. Thank you.

Linda Lewis said and Mayor Miyagishima is absent.

Mayor Pro-Tem Smith said thank you, Ms. Lewis.

Linda Lewis said and this motion does fail.

VIII. RESOLUTION(S) AND/OR ORDINANCE(S) FOR DISCUSSION

(11) Resolution No. 16-149: A Resolution Authorizing the City of Las Cruces (City) to Accept Legislative Appropriation 15-0773 in the Amount of $75,000.00, Through the New Mexico Department of Finance & Administration (NMDFA) to Plan, Design, Construct, Purchase and Install Special Needs Playground Equipment at Young Park in Las Cruces; to Ratify the City Manager's Signature on the Contract Agreement; and to Amend the City's Adopted FY2016 Budget and FY2016 Capital Improvement Program (CIP).

Councillor Eakman moved to Approve Resolution No. 16-149 and Councillor Sorg seconded the motion.

Eric Martin, Project Management Administrator presented an overhead presentation.

Councillor Eakman asked can we be assured that the surface you're describing is absolutely nontoxic and noncarcinogenic?

Eric Martin said that's something we would specify. Our sustainability office looks at being sustainable in the construction of our sites.

Councillor Pedroza said we've heard of the need for this equipment and I'm glad we're getting some.

Councillor Gandara asked do you have the funding now and when do you expect to start the design?

Eric Martin said voting yes for this resolution allows us to proceed with establishing the budget for that $75,000. Architecturally we should have someone in 30-60 days and then can present a timeline to City Council at a later date.

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Mayor Pro-Tem Smith called for the roll on the Motion to Approve Resolution No. 16-149 and it was Approved 5-0. Councillor Gandara, Councillor Pedroza, Councillor Eakman, Councillor Sorg and Mayor Pro-Tem Smith voted aye. Councillor Levatino and Mayor Miyagishima were absent.

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(12) Resolution No. 16-150: A Resolution Authorizing the City of Las Cruces (City) to Accept Legislative Appropriation No. 15-0762 in the Amount of $402,000.00, Through the New Mexico Department of Finance & Administration (NMDFA) to Plan, Design, Construct, Furnish, and Equip a Facility for Film, Digital Media and Entertainment Arts Production in Las Cruces; to Ratify the City Manager's Signature on the Contract Agreement; and to Amend the City's Adopted FY2016 Budget and FY2016 Capital Improvement Plan (CIP).

Councillor Sorg moved to Approve Resolution No. 16-150 and Councillor Eakman seconded the motion.

Eric Martin, Project Management Administrator gave an overhead presentation.

Councillor Sorg said I'm only disappointed in how long it takes to get this money from the state.

Vince Jeffers, Member of the Public said I'm concerned that this isn't absorbed in NMSU's budget. Are the funds being spent by the Purchasing Department?

Robert Garza said the appropriations are made to the City and put to their intended purpose.

Councillor Sorg said this is not a grant.

Robert Garza said many are reimbursable.

Mayor Pro-Tem Smith called for the roll on the Motion to Approve Resolution No. 16-150 and it was Approved 5-0. Councillor Gandara, Councillor Pedroza, Councillor Eakman, Councillor sorg and Mayor Pro-Tem Smith voted aye. Councillor Levatino and Mayor Miyagishima were absent.

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(13) Resolution No. 16-151: A Resolution in Support of Early Childhood Education in the City of Las Cruces and the State of New Mexico.

Councillor Sorg moved to Approve Resolution No. 16-151 and Councillor Gandara seconded the motion.

Councillor Sorg gave an oral presentation. Spending money on early childhood education is the most cost effective strategy for economic development.

Councillor Eakman said this is as much a capital need as any building and support this.

Councillor Gandara said we have an infant mental health team in our area regarding trauma and parenting.

Mayor Pro-Tem Smith said it is a critical issue that we need to look at.

Mayor Pro-Tem Smith called for the roll on the Motion to Approve Resolution No. 16-151 and it was Approved 5-0. Councillor Gandara, Councillor Pedroza, Councillor Eakman, Councillor Sorg and Mayor Pro-Tem Smith voted aye. Councillor Levatino and Mayor Miyagishima were absent.

IX. BOARD APPOINTMENTS

Jolene Martinez was appointed by Councillor Gandara to the Health and Human Services Advisory Board.

X. NOTICE OF PROPOSED ORDINANCE(S) ----- *1.) There will be no public discussion. 2.) A councillor may ask staff for clarification on the proposed ordinance(s).*

(14) Council Bill No. 16-013; Ordinance No. 2772: An Ordinance Approving a Zone Change from C-2C (Commercial Medium Intensity/Conditional) to C-2C (Commercial Medium Intensity/Conditional) for the Purpose of Modifying the Conditions of Zoning on a 0.91± Acre Parcel Located at 3520 Foothills Road. Submitted by Raymond Carlson, Project Manager on Behalf of Greco-Rentals University, LLC. (Z2891).

Mayor Pro-Tem Smith and Council agreed to bring back.

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XI. CITY COUNCIL MEMBER BOARD REPORTS

Mayor Pro-Tem Smith said the 911 call center is close to completion.

XII. MINUTE ACTION REQUIRED – Date change for next Regular City Council Meeting.

a.) Discussion on date change for the Regular City Council meeting scheduled on February 1, 2016 to February 2, 2016 at 1:00 p.m. (Motion/Second and Vote Required)

Councillor Sorg moved to change the Regular City Council meeting scheduled Feberuary 1, 2016 to February 2, 2016 and Councillor Pedroza seconded the motion.

Councillor Eakman said I will have to be excused early that day as I have previous plans.

Mayor Pro-Tem Smith called for the roll on the motion to change the Regular City Council meeting scheduled February 1, 2016 to February 2, 2016 and it was Approved 5-0. Councillor Gandara, Councillor Pedroza, Councillor Eakman, Councillor Sorg and Mayor Pro-Tem Smith voted aye. Councillor Levatino and Mayor Miyagishima were absent.

XIII. GENERAL DISCUSSION

b.) City Council

Mayor Pro-Tem Smith said thank you for the indulgence in remembering Miguel Silva today.

He said we have a resolution coming to us in February regarding support for the film festival and also support for the Piro-Mansa-Tiwa.

He said a property owner mentioned a City right-of-way through the old county courthouse and I would like to see this investigated.

Councillor Gandara said I would like support to write a resolution against House Bill 55.

She said I met with two constituents who maintain a neurodegenerative disease registry. It's House Bill 106 and I would like to create a resolution in support of developing the registry.

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Councillor Pedroza said I would be in support of both resolutions Councillor Gandara suggested.

She said I repeat my condolences to the family and friends of Councillor Silva.

Councillor Eakman said our next meeting will be held on Groundhog's Day so let's not fall into that pit.

Councillor Sorg said I would like to have a business plan for the soundstage and the creative media institute campus.

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c.) City Manager

Robert Garza said I want to thank the Council for participating in our retreat last Friday.

He said we put in a proposal for a balloon manufacturer but they chose to locate to Arizona.

He said the work session for next week will be about the sound stage and I have some recommendations to share. We will also discuss the alarm ordinance and some recommendations for change.

He said our 2016 Legislative Session kicked off today.

Councillor Eakman Moved to Adjourn and Councillor Gandara Seconded the motion.

Mayor Miyagishima said all of those in favor signify by saying "Aye."

Council said "Aye."

Meeting Adjourned at 4:10 p.m.

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